

IN THE CHANCERY COURT OF COFFEE COUNTY, TENNESSEE
FOR THE FOURTEENTH JUDICIAL DISTRICT AT MANCHESTER

STATE OF TENNESSEE, *ex rel.*)
ROBERT E. COOPER, JR.,)
ATTORNEY GENERAL and REPORTER,)
)
Plaintiff,)
v.)
)
DOGWOOD ENERGY, LLC, a Tennessee)
limited liability corporation, doing business as)
DOGWOOD ENERGY, LLC, DOGWOOD)
ENERGY, AMERICAN FREEDOM FUELS,)
PELLET MART, www.dogwoodenergy.com.)
www.americanfreedomfuels.com,)
www.woodfuelpellets.com, www.bulkpellets.com))
and www.pelletmart.com; BONITA GAIL)
SASHER a.k.a. BONNIE SASHER,)
individually and doing business as DOGWOOD)
ENERGY, LLC, DOGWOOD ENERGY,)
AMERICAN FREEDOM FUELS and)
PELLET MART; and WILLIAM RICHARD)
SASHER a.k.a. BILL SASHER, individually)
and doing business as DOGWOOD ENERGY,)
LLC, DOGWOOD ENERGY, AMERICAN)
FREEDOM FUELS and PELLET MART,)
)
Defendants.)

Case No. _____

COMPLAINT

This civil law enforcement proceeding is brought in the name of the State of Tennessee, by and through the Attorney General and Reporter, Robert E. Cooper, Jr. ("Attorney General"), pursuant to the request of Mary Clement, Director of the Division of Consumer Affairs of the Department of Commerce and Insurance ("Director"), under the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.* ("TCPA"). In addition to the authority granted

to the Attorney General under the TCPA, the Attorney General's authority for this action also stems from the Attorney General's general statutory enforcement authority under Tenn. Code Ann. § 8-6-109 and the Attorney General's authority at common law.

The Attorney General and the Director have reason to believe that the Defendants have violated the Tennessee Consumer Protection Act by engaging in unfair and deceptive acts and practices in connection with offering wood pellets used to provide heating for homes and businesses. This proceeding addresses the Defendants' conduct stemming from their sale of wood pellets and also addresses the terms and conditions of sale found on the Defendants' web sites.

Pursuant to Tenn. Code Ann. § 47-18-108(a)(2), on December 21, 2006 the Division gave ten (10) day's notice of its intention to institute legal proceedings against the above-named parties.

I. JURISDICTION AND VENUE

1. This Court exercises jurisdiction over the subject matter of this Complaint and the parties pursuant to Tenn. Code Ann. §§ 47-18-108 and 47-18-114. As the Complaint will show, the Defendants are operating a business in Tullahoma that sold wood pellets used to provide heat for consumers' homes and businesses. The Defendants promote their services via the Internet and take orders by telephone, Internet, mail and in person. Further, Defendants receive payments from consumers and other persons from across the country at the Defendants' offices in Coffee County and through Defendants' PayPal account.

2. Venue is proper in Coffee County pursuant to Tenn. Code Ann. § 47-18-108(a)(3)

because it is the county where the unfair and deceptive acts and practices alleged in this Complaint have occurred, are occurring, or are about to occur, is the principal place of business for Dogwood Energy, LLC, and is the county where Defendants William Sasher and Bonita Sasher reside.

II. THE PARTIES

3. Plaintiff, State of Tennessee, by and through its Attorney General and Reporter, Robert E. Cooper, Jr., is charged with enforcing the Tennessee Consumer Protection Act of 1977 (“TCPA”), Tenn. Code Ann. § 47-18-101 *et seq.*, which prohibits unfair or deceptive acts or practices affecting the conduct of any trade or commerce. Under Tenn. Code Ann. § 47-18-108(a)(1), the Attorney General may initiate civil law enforcement proceedings in the name of the State to enjoin violations of the TCPA and to secure such equitable and other relief as may be appropriate in each case.

4. Upon information and belief, Defendant Bonita Gail Sasher, also known as Bonnie Sasher (“Defendant Bonita Sasher”), is an individual who resides at 500 Hillwood Road, Tullahoma, Tennessee 37388. Defendant Bonita Sasher is a 51% owner of Dogwood Energy, LLC, doing business as Dogwood Energy, American Freedom Fuels, Pellet Mart, www.dogwoodenergy.com, www.americanfreedomfuels.com, www.woodfuelpellets.com, www.bulkpellets.com, and www.pelletmart.com (“Defendant Dogwood”). Prior to January 20, 2006, Defendant Bonita Sasher, in conjunction with Defendant William Sasher, operated the dbas as a sole proprietorship. At all times relevant hereto, Defendant Bonita Sasher has actively participated in the operation, sales, advertising and promotion of Defendant Dogwood, including but not limited to, its sale of wood pellets which are used to provide heating to consumers’ and

other persons' homes and businesses. Further, Defendant Bonita Sasher, acting alone or in concert with others has formulated, directed, controlled, has or has had the authority to control or has actively participated in the acts and practices at issue in this Complaint including all of the unlawful conduct alleged herein. At all times relevant to this Complaint, Defendant Bonita Sasher has the authority to stop Defendants' violations of the law.

5. Upon information and belief, Defendant William Richard Sasher, also known as Bill Sasher ("Defendant William Sasher"), is an individual who resides at 500 Hillwood Road, Tullahoma, Tennessee 37388. Defendant William Sasher is a 49% owner of Dogwood Energy, LLC, doing business as Dogwood Energy, American Freedom Fuels, Pellet Mart, www.dogwoodenergy.com, www.americanfreedomfuels.com, www.woodfuelpellets.com, www.bulkpellets.com, and www.pelletmart.com. Prior to January 20, 2006, Defendant William Sasher, in conjunction with Defendant Bonita Sasher, operated the dbas as a sole proprietorship. At all times relevant hereto, Defendant William Sasher has actively participated in the operation, sales, advertising and promotion of Defendant Dogwood, including but not limited to, offering for sale and selling wood pellets that are used to provide heating to consumers' and other persons' homes and businesses. Further, Defendant William Sasher, acting alone or in concert with others has formulated, directed, controlled, has the authority to control or has actively participated in the acts and practices at issue in this Complaint including all of the unlawful conduct alleged herein. At all times relevant to this Complaint, William Sasher has the authority to stop Defendants' violations of the law.

6. Upon information and belief, Defendant Dogwood Energy, LLC is a Tennessee limited liability corporation operating at 301 North Jackson Street, Suite 4, Post Office Box 875,

Tullahoma, Tennessee 37388. Upon information and belief, all of the names Defendant Dogwood conducts business under principally operate from this address.

7. Upon information and belief, Defendant Bonita Sasher, Defendant William Sasher and Defendant Dogwood operate and conduct business under the name “Dogwood Energy.”

8. Upon information and belief, Defendant Bonita Sasher, Defendant William Sasher and Defendant Dogwood have previously conducted business under the name “American Freedom Fuels.”

9. Upon information and belief, Defendant Bonita Sasher, Defendant William Sasher and Defendant Dogwood have previously conducted business under the name “Pellet Mart.”

10. Upon information and belief, Defendant Bonita Sasher, Defendant William Sasher and Defendant Dogwood have conducted business under the following web site names and web addresses: www.dogwoodenergy.com, www.americanfreedomfuels.com, www.woodfuelpellets.com, www.bulkpellets.com, and www.pelletmart.com.

11. Upon information and belief, the Internet web sites www.dogwoodenergy.com, www.americanfreedomfuel.com, www.woodfuelpellets.com, www.bulkpellets.com, and www.pelletmart.com are operated by or under the control of Defendant Dogwood and/or Defendant William Sasher.

12. Defendant Bonita Sasher, Defendant William Sasher and Defendant Dogwood are collectively referred to herein as “Defendants.”

III. FACTUAL ALLEGATIONS

Upon information and belief, the State alleges as follows:

13. Defendants are engaged in the business of selling wood pellets and other fuel

sources, including ethanol, in Tennessee and elsewhere. The wood pellet fuel source is used to provide heating for consumers' and other persons' homes and businesses (hereinafter "consumers").

14. The Defendants promote their wood pellets on their web sites.

15. When the Defendants first began to advertise their wood pellets on their web sites, Defendants' stated "Pellet Shortage? Reports suggest wood pellets will be in short supply next winter. It would be wise to purchase early for next year, while stock is still available."

16. The Defendants receive orders for wood pellets through their web sites, electronic mail addresses, the mail and by telephone.

17. The Defendants represent to consumers who place orders for wood pellets that the wood pellets will be shipped to consumers' homes or businesses within a designated time frame.

18. The Defendants instruct some consumers to send payments to them at the following addresses: 301 North Jackson Street, Suite 4 or Post Office Box 875, Tullahoma, Tennessee 37388.

19. The Defendants accept payments for goods and services at those addresses.

20. Other consumers who wish to pay with a credit card are instructed to make an electronic payment via PayPal.

21. The Defendants accept electronic payments for goods and services through their PayPal account(s).

22. Consumers have made payments to the Defendants for the wood pellets in good faith and with the expectation that the delivery of the wood pellets would take place within the time frame that was promised or represented to them.

23. Consumers have purchased the Defendants' wood pellets in advance as a low-cost alternative to traditional fuel sources, such as heating oil, in order to provide heating for their homes and businesses in preparation for cold weather, including the 2006-2007 winter season.

24. Beginning in December 2005 and ending on or around August 2006, approximately 910 consumers paid between \$183.00 and \$299.00 per ton to the Defendants for wood pellets.

25. On average, consumers purchased between two (2) and three (3) tons of wood pellets per order, costing the individual consumer between \$366.00 and \$897.00.

26. Some consumers purchased several more tons, resulting in orders costing individual consumers as much as \$5,000.00 for a single order.

27. Defendants offered wood pellets for delivery to any consumer within 700 miles of their Tullahoma, Tennessee location.

28. To date, the Defendants have failed to deliver the wood pellets to approximately forty percent (40%), or 364 of the consumers who purchased and paid for the wood pellets.

29. A large number of the consumers who have not received their wood pellet purchases are from New York, New Jersey and Pennsylvania.

30. Consumers located in the Northeast region of the United States must contend with winters which are colder and begin earlier than in Tennessee and the need for fuel for heating during cold months is greater.

31. Consumers from Tennessee, Virginia and Maryland have also not received their wood pellet purchase.

32. On information and belief, the Defendants have received at least \$55,000.00 from

consumers for wood pellets.

33. Consumers have contacted the Defendants to complain about the Defendants' failure to timely deliver the wood pellets that are critically needed to provide heating for the consumers' homes and businesses.

34. When consumers have sought information about the date of delivery of the wood pellets they paid for, the Defendants often tell consumers that the wood pellets will be shipped and delivered shortly, however, the wood pellets are subsequently never delivered.

35. Other consumers are told that trucking or driver problems exist and that delivery will be delayed, when, in fact, delivery is not made at all.

36. Still other consumers have reported that the Defendants do not provide customer support, do not answer their telephone nor return voice mail messages or electronic mail messages.

37. As a result of the Defendants' failure to provide customer support, consumers have been unable to inquire about the status of their past due delivery of wood pellets, to request a refund, or to inquire about the status of a refund which has been promised by the Defendants but not given to consumers.

38. Some consumers have inadvertently waived their rights to receive refunds from PayPal because they have contacted PayPal more than forty-five (45) days following purchase because they relied on the Defendants' promise of a delivery or a refund, and their assorted excuses.

39. Consumers who have been able to obtain refunds through PayPal have incurred the PayPal service fee.

40. Consumers receiving refunds through PayPal only received partial refunds due to PayPal's refund ceiling and have, therefore, not received full refunds for their ascertainable losses.

41. The Defendants have, on their own initiative, issued refund checks to approximately seventy-five (75) consumers and PayPal credits to approximately fifteen (15) to twenty (20) consumers. Approximately eighty (80) other consumers received partial credits through PayPal after filing complaints with PayPal.

42. Approximately two hundred and fifty (250) consumers have unfulfilled refund requests for their ascertainable losses.

43. Additional consumers have either not received wood pellets or did not receive their wood pellets in a timely fashion and have not received refunds or reimbursement for their ascertainable losses.

44. Some consumers purchased the wood pellets months in advance of the winter heating season to obtain a lower off-season price for the pellets.

45. Defendants advertised these low off-season wood pellet prices on their web sites, stating, "Get off-season rates! Place your order now for Summer or Fall delivery."

46. Defendants represented to consumers who placed orders for wood pellets months in advance that delivery would occur at a specified time.

47. In spite of this ample time for delivery, the Defendants failed to deliver the wood pellets on time, yet continued to state that delivery will occur. For example, a consumer from New York ordered four (4) tons of wood pellets in December 2005 for delivery on May 15, 2006.

48. The Defendants have not delivered those wood pellets or provided a refund as of

January 2007.

49. Some consumers have been waiting months for delivery relying upon the various excuses and promises of delivery made by the Defendants.

50. The Defendants failed to timely, clearly and conspicuously notify consumers in writing of the delivery delays and inform consumers of their opportunity to cancel their order for a full refund as required by the Federal Trade Commission's Mail and Telephone Order Merchandise Rule, 16 C.F.R. § 435.

51. The Defendants have represented or implied that their wood pellets were manufactured by mills that they owned when this was not the case.

52. The Defendants continued to accept new orders for wood pellets for several months, despite having an insufficient supply of wood pellets to deliver to existing consumers.

53. The Defendants' continue to have wood pellets in inventory, which they have failed to deliver to consumers.

54. The Defendants refuse or fail to provide timely or full refunds of ascertainable losses to consumers who have not received the ordered wood pellets.

55. The Defendants often do not provide any response whatsoever to inquiries from consumers.

56. As of January 5, 2007, the Tennessee Division of Consumer Affairs has received and logged over seventy (70) consumer complaints regarding the Defendants' failure to deliver promised goods and services and refusals to issues refunds.

57. As a result of these complaints, the Director of the Division of Consumer Affairs referred the Defendants to the Attorney General for investigation and prosecution under the

TCPA.

58. As of January 5, 2007, the Better Business Bureau of Middle Tennessee, Inc. ("BBB") has one hundred and eighty-six (186) consumer complaints regarding the Defendants' failure to deliver promised wood pellets.

59. As a result of the BBB complaints and the Defendants' failure to respond to those complaints, the BBB suspended Defendants' BBB membership effective December 15, 2006.

60. The Tullahoma Police Department has received numerous calls and e-mails from consumers across the country reporting problems with the Defendants' failure to deliver promised wood pellets and refusals to issue refunds.

61. The Defendants have the following terms and conditions on their web site, www.dogwoodenergy.com:

Purchase On-line Terms and Conditions

Dogwood Energy, LLC's ("Dogwood")

TERMS OF SALE

The use of this site is governed by the policies, terms and conditions set forth below. Please read them carefully. **Your use of this site indicates your acceptance of these terms and conditions. Your placement of an order indicates your acceptance of these terms and conditions. Your submittal of any purchase order to Dogwood indicates acceptance of these terms and conditions. These terms and conditions shall supercede any subsequent terms or conditions included with any purchase order, whether or not such terms or conditions are signed by Dogwood.** Dogwood reserves the right to make changes to this site and these terms and conditions at any time.

1. Acceptance; No Sales to Minors; Other Purchase Limitations; Order Cancellation. **All agreements between Dogwood and Buyer for the purchase and sale of Products, whether made via internet, telephone, written order or other means, will be governed by these Terms, unless covered by another prior written agreement.** To be valid any

deviations from these Terms must be in writing and signed by both parties. Dogwood objects to any additional or different terms in, or referenced by, Buyer's documents, and they will not be deemed a part of these Terms or any resulting order.

2. **Limitation of Liability.** Dogwood's total liability, whether for breach of contract, warranty, negligence, strict liability in tort or otherwise, is limited to the price of the particular Products sold under these Terms with respect to which losses or damages are claimed. In no event will Dogwood be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental or consequential damages to the full extent such may be disclaimed by law. No action will be brought for any breach of these Terms more than one year after the accrual of such cause of action. **You agree that this limitation of liability is comprehensive and applies to damages of any kind, including without limitation direct, indirect, compensatory, special, incidental, punitive and consequential damages.** Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to Buyer. . .

4. **Warranty. . . . Dogwood reserves the right to modify its warranty at any time, in its sole discretion. . . .**

7. General. . . . **Dogwood will not be liable for any delay or failure to perform due to any cause beyond its reasonable control. . . .** (bold emphasis added).

62. Defendants' terms and conditions are not clearly and conspicuously disclosed to consumers and include unfair, misleading, or unlawful purported conditions on sales.

63. Defendants purport to bind consumers to terms and conditions without providing adequate notice or an opportunity for the consumer to consent to such terms and conditions, including, but not limited to the changes in the scope of the warranty.

64. Defendants' terms and conditions, including, but not limited to the purported limitation of liability of the consumer's potential right to bring a private action under the TCPA for treble the amount of actual damages incurred is an unlawful attempt at waiver of rights under the TCPA, pursuant to Tenn. Code Ann. § 47-18-113.

65. Defendants' unfair or deceptive acts or practices have caused ascertainable losses to consumers in Tennessee and elsewhere, including but not limited to, amounts paid, replacement costs, and statutory interest.

66. Defendants Bonita Sasher and William Sasher, as individuals, directly participated in the unfair or deceptive practices set forth in this Complaint, had knowledge or should have had knowledge of the practices, and have had the authority to control and stop the unfair or deceptive acts or practices.

IV. VIOLATIONS OF THE LAW

67. The Plaintiff incorporates by reference and realleges each and every allegation contained in Paragraphs 1-66.

68. At all times relevant to this Complaint, the conduct alleged in this Complaint occurred in the conduct of "trade," "commerce" and/or a "consumer transaction" and the offering of, or providing of wood pellets, which are "goods" and/or "services" as defined in Tenn. Code Ann. § 47-18-103(5), (10) and (11).

69. All of the acts and practices engaged in and employed by the Defendants as alleged herein are "unfair or deceptive acts or practices affecting the conduct of any trade or commerce" in Tennessee, which are declared unlawful by Tenn. Code Ann. § 47-18-104(a)

70. Each and every unfair or deceptive act or practice engaged in by the Defendants as recited above constitutes a separate violation of the Tennessee Consumer Protection Act as provided by Tenn. Code Ann. § 47-18-104(b).

71. By causing likelihood of confusion or misunderstanding as to the source of goods, the Defendants have violated Tenn. Code Ann. § 47-18-104(b)(2).

72. By representing that a consumer's wood pellet transaction confers or involves rights, remedies, or obligations that it does not have or involve or which are prohibited by law, the Defendants have violated Tenn. Code Ann. § 47-18-104(b)(12).

73. By representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve, Defendants have violated Tenn. Code Ann. § 47-18-104(b)(19).

74. All of the acts and practices engaged in and employed by the Defendants as alleged herein are unfair and deceptive to the consumer in violation of Tenn. Code Ann. § 47-18-104(b)(27).

75. By engaging in conduct constituting an unfair or deceptive trade practice as those terms are construed and interpreted by federal courts and the Federal Trade Commission, including but not limited to, violating the Mail or Telephone Order Merchandise Rule, 16 C.F.R. Part 435, the Defendants have in turn violated Tenn. Code Ann. § 47-18-104(a) and (b)(27) pursuant to Tenn. Code Ann. § 47-18-115.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff, State of Tennessee, through its Attorney General and Reporter, Robert E. Cooper, Jr., pursuant to the Tennessee Consumer Protection Act, the Attorney General's general statutory authority, the Attorney General's common law authority and this Court's equitable powers, prays:

1. That this Complaint be filed without cost bond as provided by Tenn. Code Ann. § 47-18-116;
2. That process issue and be served upon Defendants, requiring them to appear and

answer this Complaint:

3. That this Court adjudge and decree that the Defendants have engaged in the aforementioned acts or practices which violate the Tennessee Consumer Protection Act of 1977;

4. That this Court permanently enjoin Defendants from engaging in the aforementioned acts or practices which violate the Tennessee Consumer Protection Act of 1977 and that such orders and injunctions be issued without bond pursuant to Tenn. Code Ann. § 47-18-108(4);

5. That this Court make such orders or render such judgments as may be necessary to restore to any consumer or other person any ascertainable losses, including statutory interest suffered by reason of the alleged violations of the Tennessee Consumer Protection Act of 1977, and require that Defendants be taxed with the cost of distributing and administering the same pursuant to Tenn. Code Ann. § 47-18-108(b)(1).

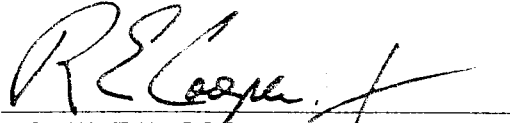
6. That this Court make such orders or render such judgments as may be necessary to disgorge the profits and ill-gotten gains Defendants realized by reason of the alleged violations of the Tennessee Consumer Protection Act of 1977;

7. That this Court enter judgment against Defendants and in favor of the State for the reasonable costs and expenses of the investigation and prosecution of the Defendants' actions, including attorneys' fees, expert and other witness fees, as provided by Tenn. Code Ann. § 47-18-108(a)(5) and (b)(4);

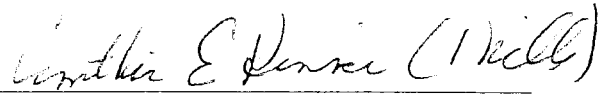
8. That this Court adjudge and decree that Defendants pay civil penalties of not more than one thousand dollars (\$1,000.00) per violation to the State as provided by Tenn. Code Ann. § 47-18-108(b)(3);

9. That all costs in this case be taxed against Defendants; and
10. That this Court grant Plaintiff such other and further relief as this Court deems just and proper.

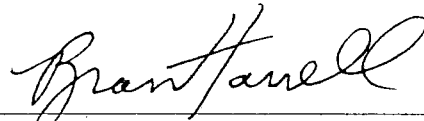
Respectfully submitted,



ROBERT E. COOPER, JR.
Attorney General and Reporter
B.P.R. No. 010934



CYNTHIA E. KINSER (MILLS)
Deputy Attorney General
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Attorneys for Plaintiff, State of Tennessee

Recommended By:

A handwritten signature in cursive script, appearing to read "Mary Clement", is written over a horizontal line.

DIRECTOR MARY CLEMENT

Division of Consumer Affairs

Department of Commerce and Insurance